

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #5	CCRB Case #: 202002134	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday 03/13/2020 10:00 PM	18 Mo. SOL 09-13-2021	EO SOL 04-30-2022	Location of Incident: [REDACTED] East 48th Street		Precinct: 67
Date/Time CV Reported Sat, 03/14/2020 12:04 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 03/14/2020 12:04 PM		

Complainant/Victim	Type	Home Address
1. A [REDACTED] D [REDACTED]	Comp/Victim	[REDACTED] East 48th Street Brooklyn NY 11203
2. R [REDACTED] D [REDACTED]	Victim	[REDACTED] East 48th Street Brooklyn NY 11203

Subject Officer(s)	Shield	TaxID	Command
1. SGT D [REDACTED] G [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
2. DTS M [REDACTED] W [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
3. LT J [REDACTED] G [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
4. POM J [REDACTED] D [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
5. POM N [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]	067 PCT
6. POM Joseph Bautista	00113	954534	INT CIS
7. POM S [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A . LT J [REDACTED] G [REDACTED]	Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] entered [REDACTED] East 48th Street in Brooklyn.	A . Unfounded
B . POM S [REDACTED] R [REDACTED]	Force: Police Officer S [REDACTED] R [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	B . Unfounded
C . POM S [REDACTED] R [REDACTED]	Force: Police Officer S [REDACTED] R [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	C . Unfounded
D . POM Joseph Bautista	Force: Police Officer Joseph Bautista pointed his gun at R [REDACTED] D [REDACTED]	D . Unfounded
E . POM Joseph Bautista	Force: Police Officer Joseph Bautista pointed his gun at A [REDACTED] D [REDACTED]	E . Unfounded
F . POM J [REDACTED] D [REDACTED]	Force: Police Officer J [REDACTED] D [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	F . Unfounded
G . POM J [REDACTED] D [REDACTED]	Force: Police Officer J [REDACTED] D [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	G . Unfounded
H . SGT D [REDACTED] G [REDACTED]	Force: Sergeant D [REDACTED] G [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	H . Unfounded
I . SGT D [REDACTED] G [REDACTED]	Force: Sergeant D [REDACTED] G [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	I . Unfounded
J . LT J [REDACTED] G [REDACTED]	Force: Lieutenant J [REDACTED] G [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	J . Unfounded
K . LT J [REDACTED] G [REDACTED]	Force: Lieutenant J [REDACTED] G [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	K . Unfounded
L . DTS M [REDACTED] W [REDACTED]	Force: Detective M [REDACTED] W [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	L . Unfounded

Officer(s)	Allegation	Investigator Recommendation
M . DTS M [REDACTED] W [REDACTED]	Force: Detective M [REDACTED] W [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	M . Unfounded
N . POM N [REDACTED] S [REDACTED]	Force: Police Officer N [REDACTED] S [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]	N . Unfounded
O . POM N [REDACTED] S [REDACTED]	Force: Police Officer N [REDACTED] S [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]	O . Unfounded
P . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped R [REDACTED] D [REDACTED]	P . Exonerated
Q . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped A [REDACTED] D [REDACTED]	Q . Exonerated
R . LT J [REDACTED] G [REDACTED]	Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] stopped R [REDACTED] D [REDACTED]	R . Exonerated
S . LT J [REDACTED] G [REDACTED]	Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] stopped A [REDACTED] D [REDACTED]	S . Exonerated
T . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked R [REDACTED] D [REDACTED]	T . Exonerated
U . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched R [REDACTED] D [REDACTED]	U . Exonerated
V . SGT D [REDACTED] G [REDACTED]	Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] frisked A [REDACTED] D [REDACTED]	V . Unfounded
W . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked A [REDACTED] D [REDACTED]	W . Exonerated
X . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched A [REDACTED] D [REDACTED]	X . Exonerated
Y . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] refused to provide his name to A [REDACTED] D [REDACTED]	Y . Unfounded
Z . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.	Z . Exonerated
AA. DTS M [REDACTED] W [REDACTED]	Abuse of Authority: Detective M [REDACTED] W [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.	AA. Exonerated
AB. POM N [REDACTED] S [REDACTED]	Abuse of Authority: Police Officer N [REDACTED] S [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.	AB. Exonerated
AC. LT J [REDACTED] G [REDACTED]	Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.	AC. Exonerated
AD. SGT D [REDACTED] G [REDACTED]	Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] threatened to arrest R [REDACTED] D [REDACTED]	AD. Exonerated

Case Summary

On March 14, 2020, A■■■■ D■■■■ filed this complaint on the CCRB's website on behalf of herself and her husband, R■■■■ D■■■■. That same day, Ms. D■■■■ filed a duplicate complaint with IAB, generating original log #20-8100. The CCRB received the IAB referral on March 30, 2020.

On March 13, 2020, at approximately 10 p.m., Mr. D■■■■ and Ms. D■■■■ were smoking marijuana in their car, which was parked in the shared driveway behind their house at ■■■ East 48th Street in Brooklyn. Sergeant D■■■■ G■■■■ and Police Officers S■■■■ R■■■■ J■■■■ D■■■■ and Joseph Bautista, all from the Intelligence Bureau's Criminal Intelligence Section, along with Lieutenant J■■■■ G■■■■ Detective M■■■■ W■■■■ and Police Officer N■■■■ S■■■■ all from the 67th Precinct, approached the vehicle. Lt. G■■■■ and the other officers allegedly encroached on Mr. D■■■■ and Ms. D■■■■ protected curtilage by driving onto and walking on their private driveway (**Allegation A: Abuse of Authority, unfounded**). PO R■■■■ PO Bautista, PO D■■■■ Sgt. G■■■■ Lt. G■■■■ Det. W■■■■ and PO S■■■■ allegedly pointed their guns at Mr. D■■■■ and Ms. D■■■■ (**Allegations B–O: Force, unfounded**). PO R■■■■ and Lt. G■■■■ stopped Mr. D■■■■ and Ms. D■■■■ (**Allegations P–S: Abuse of Authority, exonerated**). PO R■■■■ frisked and allegedly searched Mr. D■■■■ (**Allegations T–U: Abuse of Authority, exonerated**). Sgt. G■■■■ allegedly frisked Ms. D■■■■ (**Allegation V: Abuse of Authority, unfounded**). PO R■■■■ frisked and allegedly searched Ms. D■■■■ (**Allegations W–X: Abuse of Authority, exonerated**). PO R■■■■ allegedly refused to provide his name to Ms. D■■■■ (**Allegation Y: Abuse of Authority, unfounded**). PO R■■■■ and Det. W■■■■ searched the front and back seats of Mr. D■■■■ and Ms. D■■■■ car (**Allegations Z–AA: Abuse of Authority, exonerated**). PO S■■■■ and Lt. G■■■■ searched the trunk (**Allegations AB–AC: Abuse of Authority, exonerated**). Sgt. G■■■■ threatened to arrest Mr. D■■■■ (**Allegation AD: Abuse of Authority, exonerated**). Det. W■■■■ issued Mr. D■■■■ one criminal summons for unlawful possession of marijuana (**Board Review 01**).

The investigation obtained BWC footage (**Board Review 02–08**, summarized at **Board Review 09–15**), as well as cell phone videos Mr. D■■■■ recorded of his neighbor's surveillance camera system (**Board Review 16–19**, all summarized at **Board Review 20**). All references to video evidence below refer to the time stamps in the video player itself, and not to any onscreen clock embedded in the footage.

Due to allegations of sexual misconduct Ms. D■■■■ raised, the investigation generated an EDCIR (**Board Review 21**) as well as referrals to the King's County District Attorney's Office (under CCRB case #202002543) and to IAB (under CCRB case #202002544).

It was not necessary to interview officers for this case due to the comprehensive BWC footage. The COVID-19 global pandemic delayed the completion of this investigation.

Findings and Recommendations

Allegation A—Abuse of Authority: Lieutenant J■■■■ G■■■■ entered ■■■ East 48th Street in Brooklyn.

It is undisputed that a team of plainclothes officers from the Criminal Intelligence Section and 67th Precinct approached Mr. D■■■■ and Ms. D■■■■ as they sat in their car while it was parked behind their residence. It is further undisputed that this residence has its front door on East 48th Street, and a rear, private driveway, perpendicular to East 48th Street, that abuts the house. The private driveway connects to a dead-end common driveway, parallel to East 48th Street, that the D■■■■ neighbors all share. The entrance to the shared driveway is on Cortelyou Road, which also runs perpendicular to East 48th Street. There are no "No Trespassing" or other such signs at the entrance of the shared driveway, and cars for all residents in the block and their guests can drive freely in and out of the shared driveway. Nothing obstructs one's view of the shared driveway from Cortelyou Road, which is a public roadway.

What remains in dispute, is where Mr. D [REDACTED] and Ms. D [REDACTED] car was parked when the officers approached it, and where the officers went during the incident.

Mr. D [REDACTED] and Ms. D [REDACTED] (**Board Review 22–23**) testified that Mr. D [REDACTED] backed their car into their private driveway and parked it there. When the officers arrived, some drove into their private driveway. The remainder of the incident unfolded in the private driveway. The investigation pleaded this allegation against Lt. G [REDACTED] as the ranking supervisor on scene.

The BWC footage (**Board Review 02–08**) shows that Mr. D [REDACTED] and Ms. D [REDACTED] car was actually parked in the shared driveway, facing Cortelyou Road—not in their private driveway. The BWCs shows that no officers went into the private driveway or otherwise entered private property.

Curtilage is the area immediately surrounding and associated with the home, or the area that is related to the intimate activities of the home. Factors to consider in determining whether an area is curtilage include: its proximity to the house, whether it is within an enclosure that surrounds the house, the nature of the uses to which it is put, and the steps that the resident takes to protect the area from observation. People v. Theodore, 114 A.D.3d 814 (2nd Dept. 2014) (**Board Review 24**).

As described above, the investigation determined that the incident took place in the shared driveway, and not in the private driveway as Mr. D [REDACTED] and Ms. D [REDACTED] testified. Under Theodore, the private driveway is curtilage, but the shared driveway is not. The shared driveway is not in the area immediately surrounding the home or within an enclosure that surrounds the home, nor is it related to the intimate activities of the home. The shared driveway is plainly visible from Cortelyou Road, and Mr. D [REDACTED] and Ms. D [REDACTED] took no steps to shield it from observation—nor could they have, as it also serves all of their neighbors.

The investigation determined that the officers did not enter the property of Mr. D [REDACTED] and Ms. D [REDACTED] residence. It is therefore recommended that **Allegation A** be closed as **unfounded**.

Allegation B—Force: Police Officer S [REDACTED] R [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation C—Force: Police Officer S [REDACTED] R [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

Allegation D—Force: Police Officer Joseph Bautista pointed his gun at R [REDACTED] D [REDACTED]

Allegation E—Force: Police Officer Joseph Bautista pointed his gun at A [REDACTED] D [REDACTED]

Allegation F—Force: Police Officer J [REDACTED] D [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation G—Force: Police Officer J [REDACTED] D [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

Allegation H—Force: Sergeant D [REDACTED] G [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation I—Force: Sergeant D [REDACTED] G [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

Allegation J—Force: Lieutenant J [REDACTED] G [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation K—Force: Lieutenant J [REDACTED] G [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

Allegation L—Force: Detective M [REDACTED] W [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation M—Force: Detective M [REDACTED] W [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

Allegation N—Force: Police Officer N [REDACTED] S [REDACTED] pointed his gun at R [REDACTED] D [REDACTED]

Allegation O—Force: Police Officer N [REDACTED] S [REDACTED] pointed his gun at A [REDACTED] D [REDACTED]

The day after the incident, Ms. D [REDACTED] filed a complaint on the CCRB’s website (**Board Review 25**) and also by calling IAB (IAB intake call at **Board Review 26**; IAB log at **Board Review 27**). In both of those initial complaints, Ms. D [REDACTED] described the officers as having their “guns out” or drawn, but she did not specify where they were pointing the guns. However, Mr. D [REDACTED] and Ms. D [REDACTED] (**Board Review 22–23**) both recounted in their CCRB interviews that the officers all pointed guns at them upon approach.

The BWC footage (**Board Review 02–08**), however, shows that while the officers approached Mr. D [REDACTED] and Ms. D [REDACTED] they were pointing flashlights—not firearms. Based upon the BWC footage, the investigation determined that the officers did not point their guns at Mr. D [REDACTED] and Ms. D [REDACTED]. It is therefore recommended that **Allegations B–O** be closed as **unfounded**.

Allegation P—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped R [REDACTED] D [REDACTED]
Allegation Q—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped A [REDACTED] D [REDACTED]
Allegation R—Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] stopped R [REDACTED] D [REDACTED]
Allegation S—Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] stopped A [REDACTED] D [REDACTED]
Allegation T—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked R [REDACTED] D [REDACTED]
Allegation U—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched R [REDACTED] D [REDACTED]
Allegation W—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked A [REDACTED] D [REDACTED]
Allegation X—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched A [REDACTED] D [REDACTED]
Allegation Z—Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.
Allegation AA—Abuse of Authority: Detective M [REDACTED] W [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.
Allegation AB—Abuse of Authority: Police Officer N [REDACTED] S [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.
Allegation AC—Abuse of Authority: Lieutenant J [REDACTED] G [REDACTED] searched the vehicle in which R [REDACTED] D [REDACTED] and A [REDACTED] D [REDACTED] were occupants.

It is undisputed that the officers approached Mr. D [REDACTED] and Ms. D [REDACTED] as they sat in their car parked behind their house, and then stopped them on suspicion of having tinted windows. The car's windows were, in fact, darkly tinted. The officers ordered Mr. D [REDACTED] out of the car. PO R [REDACTED] at least frisked Mr. D [REDACTED]. The officers then ordered Ms. D [REDACTED] out of the car. At least one officer—identified as PO R [REDACTED] at least frisked Ms. D [REDACTED]. PO R [REDACTED] and Det. W [REDACTED] searched the front and back seats, respectively, of Mr. D [REDACTED] and Ms. D [REDACTED] car. PO S [REDACTED] and Lt. G [REDACTED] searched the trunk. Det. W [REDACTED] ultimately issued Mr. D [REDACTED] one criminal summons for unlawful possession of marijuana (**Board Review 01**).

What Mr. D [REDACTED] and Ms. D [REDACTED] were doing before the police approached, and whether there was any marijuana in the car, remains in dispute. The investigation pleaded the stop against PO R [REDACTED] as he was the first officer to approach and begin the stop, and also against Lt. G [REDACTED] as the ranking supervisor on scene.

Mr. D [REDACTED] and Ms. D [REDACTED] (**Board Review 22–23**) recounted that before the officers stopped them, they were sitting in the front seats of their car with the engine and lights completely off. The BWC footage, however, shows that Mr. D [REDACTED] and Ms. D [REDACTED] car was at least partially on, as the rear lights, headlights, and built-in GPS were all alit. The investigation therefore credits that the car was at least partially on.

Mr. D [REDACTED] and Ms. D [REDACTED] further testified that, for approximately 15 minutes after they parked the car but before the police arrived, they were simply getting ready to go inside their residence. They were entirely unable to account for how they spent that time, besides Mr. D [REDACTED] briefly falling asleep. They explicitly denied possessing or smoking marijuana, and they claimed that the officers must have planted the marijuana for which Mr. D [REDACTED] received a summons. In her website complaint (**Board Review 25**), Ms. D [REDACTED] described Mr. D [REDACTED] summons as a “fake summons.” After Ms. D [REDACTED] exited the car, two male officers patted down her legs and breasts in a way that both Mr. D [REDACTED] and Ms. D [REDACTED] described as sexually inappropriate.

Sometime after the incident, Mr. D [REDACTED] viewed his neighbor's surveillance footage and recorded the computer screen playing the footage with his cell phone. The surveillance footage does not provide much additional information beyond what the comprehensive BWC shows. However, at the 01:30 mark in one of the videos (**Board Review 18**), Mr. D [REDACTED] audibly describes the incident to his neighbor. Mr. D [REDACTED] tells his neighbor that several officers searched Ms. D [REDACTED] and “touched her vagina, breasts, yeah. So now she has a sexual harassment complaint.”

BWC footage from PO R [REDACTED] (**Board Review 02**), the first officer to approach, shows the following. As soon as the audio comes in at the 00:30 mark, PO R [REDACTED] was already asking Mr. D [REDACTED] and Ms. D [REDACTED] about marijuana. At least the rear driver's side window was partially rolled down as he approached. As the conversation unfolded, Ms. D [REDACTED] acknowledged smoking

marijuana in the car. PO R████ frisked Mr. D████ and Ms. D████ in turn. No other officer frisked Ms. D████. PO R████ never touched Ms. D████ breasts as she alleged. While searching the car, PO R████ recovered a Ziploc bag of marijuana in the center console and a scale in Ms. D████ purse.

As Lt. Grimm's BWC footage shows (**Boar Review 07**) beginning at the 08:45 mark, Mr. D████ acknowledged that he had "10 Gs," or grams, of marijuana in the car. Upon learning that the officers were taking enforcement action regarding the marijuana, Mr. D████ asked if he could keep enough of the marijuana to roll another marijuana cigarette. Ms. D████ also asked to keep 3.5 grams of the marijuana, which she pleaded was just for personal use.

Det. W████ vouchered the marijuana that PO R████ recovered. The voucher (**Board Review 28**) shows that the suspected marijuana field tested positive for marijuana. Memo books from Sgt. G████, Lt. G████ and PO Bautista (**Board Review 29–31**) all provide contemporaneous documentation of an odor of marijuana coming from Mr. D████ and Ms. D████ car. Det. Walker's memo book (**Board Review 32**) notes that Mr. D████ and Ms. D████ were smoking.

Based upon the BWC footage, the investigation credited that there was a detectable odor of marijuana smoke emanating from the vehicle during the incident, despite Mr. D████ and Ms. D████ claims to the contrary. In sum, the BWC footage showed that Mr. D████ and Ms. D████ made several noncredible claims in their CCRB testimony, including that they were not smoking marijuana in the vehicle, that officers planted marijuana during the incident, that an officer frisked Ms. D████ in a sexually inappropriate manner, that Sgt. G████ frisked Ms. D████ and that PO R████ refused to provide his name to Ms. D████ upon request.

Officers may stop a vehicle provided that they have "probable cause or reasonable suspicion, based on specific and articulable facts, of unlawful conduct." United States v. Scopo, 19 F.3d 777 (2d Cir. 1994) (**Board Review 33**). In New York State, it is a violation of the Vehicle and Traffic Law (VTL) to operate a vehicle with less than 70% light transmittance. NYS VTL § 375(12-a)(b) (**Board Review 34**). However, a person does not need to be *driving* a motor vehicle in order "operate" one. Instead, New York courts have long recognized that any intentional action or use of any "mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle," qualifies as 'operating' the vehicle for VTL purposes. People v. Prescott, 95 N.Y.2d 655 (2001) (**Board Review 35**).

During a lawful traffic stop, the odor of marijuana smoke emanating from a vehicle provides probable cause to search the vehicle and its occupants. People v. Chestnut, 43 A.D.2d 260 (1974) (**Board Review 36**). This proposition holds true even in the stop of an already-parked, as opposed to moving, vehicle. People v. Norman, 142 A.D.3d 1107 (2d Dept. 2016) (**Board Review 37**).

Mr. D████ was sitting behind the wheel of a car with at least some of its interior and exterior lights on, which would likely have required his keys in the ignition. This qualifies as operating a motor vehicle under Prescott. As a result, the officers were justified in stopping him based upon the vehicle's darkly tinted windows. It is therefore recommended that **Allegations P–S** be closed as **exonerated**.

The odor of marijuana provided sufficient justification for the officers to frisk and search Mr. D████ and Ms. D████ and to search their vehicle. It is therefore recommended that **Allegations T, U, W, X, and Z–AC** be closed as **exonerated**.

Allegation V—Abuse of Authority: Sergeant D████, G████ frisked A████, D████

Ms. D████ (**Board Review 23**) alleged that Sgt. G████ whom she knows from previous interactions as "Bullethead," also frisked her.

BWC footage from PO R████ (**Board Review 02**) shows that he was the only officer who frisked Ms. D████. The BWC footage (**Board Review 02–08**) shows that Sgt. G████ never frisked Ms. D████.

Given the comprehensive BWC footage, the investigation determined that Sgt. G████

never frisked Ms. D [REDACTED]. It is therefore recommended that **Allegation V** be closed as **unfounded**.

Allegation Y—Police Officer S [REDACTED] R [REDACTED] refused to provide his name to A [REDACTED] D [REDACTED]

Ms. D [REDACTED] (**Board Review 23**) alleged that she asked the officer who frisked her for his name immediately after the frisk. He refused to provide the requested information.

PO Rizzo's BWC (**Board Review 02**), beginning at the 01:40 mark, shows his brief frisk of Ms. D [REDACTED]. Afterwards, she walks to the rear of the car without asking for his name. None of the BWC videos (**Board Review 02–08**) depicts Ms. D [REDACTED] asking for any officer's name.

Given the comprehensive BWC footage, the investigation determined that Ms. D [REDACTED] never asked PO R [REDACTED] for his name. It is therefore recommended that **Allegation Y** be closed as **unfounded**.

Allegation AD—Sergeant D [REDACTED] G [REDACTED] threatened to arrest R [REDACTED] D [REDACTED]

Mr. D [REDACTED] and Ms. D [REDACTED] (**Board Review 22–23**) alleged that Sgt. G [REDACTED] threatened to arrest Mr. D [REDACTED] if he did not calm down while the officers were issuing him a summons.

BWC footage from Sgt. G [REDACTED] (**Board Review 05**), beginning at the 08:50 mark, shows that Sgt. G [REDACTED] told Mr. D [REDACTED] that he could go to jail for the quantity of marijuana he had just admitted to possessing. By this point, the officers had already recovered the marijuana and decided to issue Mr. D [REDACTED] a summons for it. Meanwhile, Lt. G [REDACTED] argued with Mr. D [REDACTED] about whether the car was parked on private property. Sgt. G [REDACTED] told Mr. D [REDACTED] "Be quiet, take your summons, or you're gonna end up in handcuffs. If you don't wanna ruin your night, relax." Mr. D [REDACTED] calmed down after this.

NYPD Patrol Guide Procedure 208-01 (**Board Review 38**) authorizes a warrantless arrest provided that such an arrest is based on probable cause.

As determined previously, Sgt. G [REDACTED] had probable cause to arrest Mr. D [REDACTED] and was issuing him a summons in lieu of an arrest. As a result, he was justified in telling Mr. D [REDACTED] that he could have been arrested. It is therefore recommended that **Allegation AD** be closed as **exonerated**.

Civilian and Officer CCRB Histories

- Mr. D [REDACTED] has been party to three other CCRB complaints and has been named as a victim in six allegations (**Board Review 39**):
 - #201908868, in which Sgt. G [REDACTED] is a witness and in which Ms. D [REDACTED] is also a victim, involved allegations of premises entered and searched. To date, the investigation is ongoing.
 - #201211976 involved two physical force allegations, which were both closed as alleged victim unavailable.
 - #200808719 involved allegations of a vehicle stop and a strip search, which were both closed as complainant uncooperative.
- Ms. D [REDACTED] has been party to three other CCRB complaints and has been named as a victim in five allegations (**Board Review 40**).
 - #201908868, in which Sgt. G [REDACTED] is a witness and in which Mr. D [REDACTED] is also a victim, involved allegations premises entered and searched. To date, the investigation is ongoing.
 - #201809010 was a duplicate of #201808804, described below.
 - #201808804 involved a substantiated frisk allegation, an unsubstantiated gun pointed allegation, and an unfounded physical force allegation.
- Sgt. G [REDACTED] has been a member of service for 14 years and has been named a subject in 41 other CCRB complaints and 119 other allegations, of which 12 have been substantiated:
 - #201111996 involved a substantiated premises entered and/or searched allegation against Sgt. G [REDACTED]. The Board recommended Command Discipline. The NYPD imposed Instructions.
 - #201207718 involved a substantiated stop allegation against Sgt. G [REDACTED]. The Board recommended Charges and Specifications. The NYPD imposed forfeiture of one vacation day.

- #201405351 involved a substantiated premises entered and/or searched allegation against Sgt. G [REDACTED]. The Board recommended Charges and Specifications. Sgt. G [REDACTED] was found not guilty at trial, and no discipline was imposed.
- #201800398 involved substantiated vehicle stop, vehicle search, search of person, and threat of summons allegations against Sgt. G [REDACTED]. The Board recommended Charges and Specifications. This case is currently being litigated by APU.
- #201901422 involved a substantiated threat of force allegation against Sgt. G [REDACTED]. The Board recommended Formalized Training. The NYPD imposed Instructions.
- #201903162 involved four substantiated allegations of supervising improper arrests against Sgt. G [REDACTED]. The Board recommended Formalized training. The NYPD imposed Formalized Training.
- Lt. G [REDACTED] has been a member of service for 12 years and has been named a subject in 11 other complaints and 19 other allegations, none of which was substantiated. Lt. Grimm's CCRB history does not reflect any apparent patterns relevant to this case.
- PO R [REDACTED] has been a member of service for seven years and has been named a subject in seven other CCRB complaints and 22 other allegations, none of which was substantiated. PO Rizzo's CCRB history does not reflect any apparent patterns relevant to this case.
- PO Bautista has been a member of service for seven years and has been named a subject in five other CCRB complaints and 20 other allegations, none of which was substantiated. PO Bautista's CCRB history does not reflect any apparent patterns relevant to this case.
- PO D [REDACTED] has been a member of service for seven years and has been named a subject in four other CCRB complaints and six other allegations, none of which has been substantiated. PO Delgado's CCRB history does not reflect any apparent patterns relevant to this case.
- Det. W [REDACTED] has been a member of service for five years and has been named a subject in four other CCRB complaints and six other allegations, none of which was substantiated. Det. Walker's CCRB history does not reflect any apparent patterns relevant to this case.
- PO S [REDACTED] has been a member of service for five years and has been named a subject in four other CCRB complaints and eight other allegations, of which two were substantiated:
 - #201903016 involved substantiated entry of premises and threat of force allegations against PO S [REDACTED]. The Board recommended Formalized Training. The NYPD has not yet imposed discipline.
 - PO Schiraldi's CCRB history does not reflect any apparent patterns relevant to this case.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of December 16, 2020, the NYC Comptroller's Office does not have any record of a Notice of Claim being filed regarding this incident (**Board Review 41**).
- According to the Office of Court Administration (OCA), between April 8, 2010, and June 19, 2019, Mr. D [REDACTED] has been convicted of criminal contempt in the second degree, criminal possession of a controlled substance in the seventh degree, criminal possession of a forged instrument in the third degree, criminal possession of a weapon in the fourth degree, disorderly conduct, driving while intoxicated, grand larceny, and violating the terms of a conditional discharge, for which he received various fines, imprisonment, and probation. OCA does not list any other convictions (**Board Review 42**).
- According to the OCA, on January 29, 2019, Ms. D [REDACTED] was convicted of disorderly conduct, for which she received fines and a now-completed conditional discharge. OCA does not list any other convictions (**Board Review 43**).

Squad No.: #05

Investigator:	<u>Conor Seamus O'Shea</u> Signature	<u>Investigator Conor O'Shea</u> Print Title & Name	<u>January 7, 2021</u> Date
Squad Leader:	<u>Daniel Giansante</u> Signature	<u>IM Daniel Giansante</u> Print Title & Name	<u>January 7, 2021</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date